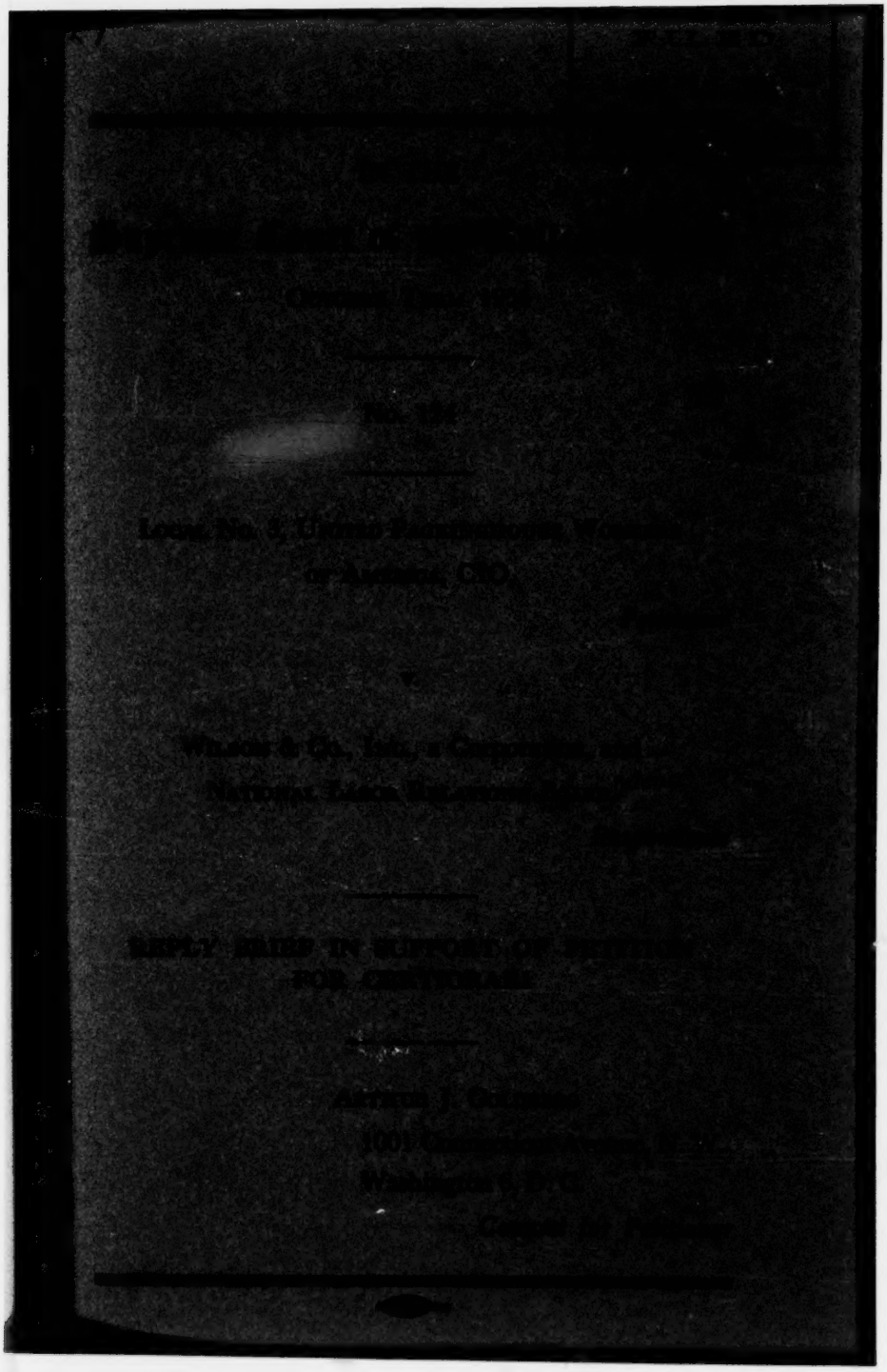

IN THE

Supreme Court of the United States

OCTOBER TERM 1954

No. 124

LOCAL NO. 3, UNITED PACKINGHOUSE WORKERS OF AMERICA, CIO,

Petitioner

v.

WILSON & CO., INC., a Corporation, and

NATIONAL LABOR RELATIONS BOARD,

Respondents

REPLY BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

The Brief in Opposition of Respondent, Wilson & Co., Inc., argues, *inter alia,* that Petitioner has no standing to seek review by this Court (Petition pp. 7-9). This Reply

Brief will deal only with this contention, which was not discussed in the Petition.

PETITIONER HAS STANDING TO SEEK REVIEW

The Company asserts that Petitioner, although it was allowed to intervene in the Court below, has no standing to seek review of the decision and decree below denying enforcement of the Board's order. This conclusion is asserted to follow from this Court's holding in *Amalgamated Utility Workers* v. *Consolidated Edison Co.*, 309 U. S. 261, that an intervening union does not have standing to press a charge of contempt against an employer, because only the Board may seek enforcement of its order.

However, in *International Union of Mine, Mill and Smelter Workers* v. *Eagle-Picher Mining & Smelting Co.*, 325 U. S. 335, this Court squarely held that an intervening union has standing to seek review by this Court of a court of appeals' decision rejecting a Board petition. This Court said (325 U. S. at 338-339):

> "They [the employers] also attack the standing of the petitioners to seek review by this court when the Board, the body charged with the enforcement of the National Labor Relations Act, has elected not to seek review. We think that, in the circumstances disclosed, the petitioners, though they could not have instituted enforcement proceedings,[1] had standing to seek review of the order denying the Board's petition."

The *International Union* decision thus completely dis-

[1] At this point the Court cited the *Amalgamated Utility Workers* case and other similar decisions.

poses of any question as to Petitioner's standing to seek review.

The Respondent Company states (Brief p. 8) that the *International Union* case "may be readily distinguished" because "The petitioning union was there attempting to 'contest' or overturn an order of the Board." This assertion is flagrantly misleading. In the *International Union* case the intervening unions supported the Board's petition for enforcement when the case was first before the court of appeals, and the enforcement decree sought by the Board and the unions was entered (325 U. S. at 337). Two years later the Board decided that the method of computing back pay specified in the decree should be changed, and petitioned the court to vacate that portion of the decree and remand the case to the Board (325 U. S. at 338). The unions again intervened in support of the Board's petition. The court, however, dismissed the petition to vacate the decree. "The Board did not apply for certiorari but the intervening unions whose petition had also been dismissed applied for the writ." (325 U. S. at 338.)

That case is thus on all fours with the present. The intervening unions took the same position as the Board at each step of the proceeding, and when the Board did not apply for certiorari after the second decision the unions sought (and secured) review. To say, as does the Respondent Company, that, because the second petition of the Board and the unions asked modification of the decree originally secured, the union was "attempting to 'contest' or overturn an order of the Board" is, at the least, disengenuous.

CONCLUSION

For the reasons stated in the Petition, it is respectfully submitted that the petition for a writ of certiorari should be granted.

Respectfully submitted,

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